

PUBLIC VERSION

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June 3, 2019

By ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1, WC Docket No. 18-60, Transmittal Nos. 40-41***

Dear Ms. Dortch:

AT&T Services, Inc. (“AT&T”) hereby submits the **Public Version** of an ex parte letter in support of its Petition to Reject or to Suspend and Investigate the proposed tariff in Transmittal Nos. 40-41 filed by Iowa Network Services, Inc. d/b/a Aureon Network Services (“Aureon”). Consistent with the Commission’s rules and the March 26, 2018 Protective Order entered by the Commission Staff, AT&T has redacted all “Confidential Information” from the **Public Version**, which it is filing by ECFS.

AT&T is also filing by hand with the Secretary’s office four hard copies of the **Confidential Version** of this submission. In addition, copies of all versions of the submission are being served electronically on Aureon’s counsel. Two copies are also being provided to Joseph Price at the Wireline Competition Bureau.

Please contact me if you have any questions regarding this matter.

/s/ James F. Bendoragel, Jr.
James F. Bendoragel, Jr.

Enclosures

Cc: James L. Troup, Counsel for Aureon
Tony Lee, Counsel for Aureon
Gil Strobel, FCC
Victoria Goldberg, FCC
Edward Krachmer, FCC

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Marlene H. Dortch

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Re: ***In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1, WC Docket No. 18-60, Transmittal Nos. 40-41***

Dear Ms. Dortch:

This *ex parte* filing is being submitted on behalf of AT&T Services, Inc. (“AT&T”) for the principal purpose of responding to the decision of Iowa Network Services d/b/a Aureon Network Services (“Aureon”) to defer the effective date of its new tariff filing until June 28, 2019.¹ AT&T also addresses a number of the arguments set forth in Aureon’s May 10, 2019 Reply to AT&T’s Petition to Reject or Suspend and Investigate² and sets forth proposals with respect to Aureon’s CEA rate for the periods March 1, 2018 to June 27, 2019 and June 28, 2019 to June 30, 2020.

By order dated November 8, 2017, the Commission found that Aureon’s CEA rate of \$0.00896/min was unlawful and that AT&T had raised substantial questions regarding the reasonableness of Aureon’s ratemaking practices.³ The Commission further directed Aureon to file a new rate, which Aureon did on February 22, 2018, with a proposed effective date of March 1, 2018.⁴ That rate (\$0.00576/min) was suspended and later found not to be just and reasonable.⁵ The rate (\$0.00296/min) that Aureon subsequently filed also was suspended and found not to be

¹ See Letter from James U. Troup, Counsel for Aureon to Marlene H. Dortch (May 10, 2019).

² See Reply of Iowa Network Services d/b/a Aureon Network Services to the Petition to Reject or to Suspend and Investigate Filed by AT&T Corp, WC Docket No. 18-60, Transmittal No. 40 (May 10, 2019) (“Aureon Reply”).

³ See Memorandum Opinion and Order, *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, 32 FCC Rcd. 9677, ¶ 30 (2017) (“*Liability Order*”).

⁴ *Id.* ¶ 35.

⁵ Memorandum Opinion and Order, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, 33 FCC Rcd. 7517, ¶ 122 (2018) (“*First Rate Order*”).

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just and reasonable.⁶ In the *Second Rate Order*, the Commission again directed Aureon to file a revised rate, and also required Aureon to address both specific issues identified in the *Second Rate Order* as well as other issues raised in the course of the Commission's second rate investigation.⁷

On April 29, 2019, Aureon made a third tariff filing in which it proposed to raise its CEA rate to \$0.00363/min for the period of May 14, 2019 to June 30, 2020.⁸ Notwithstanding that Aureon's prior tariff filings were subject to an accounting order requiring Aureon to refund to customers the difference between the amounts paid at the unlawful tariff rates since March 1, 2018, and the rate that the Commission ultimately determines to be reasonable, its new tariff filing said nothing about the rate for the period of March 1, 2018 to May 13, 2019. Shortly thereafter, AT&T filed a third petition to reject or suspend,⁹ and while Aureon opposed that petition, it nevertheless voluntarily deferred the effective date of its proposed new rate until June 28, 2019.

As explained below in Part I, the Commission should prescribe a rate of \$0.00164/min for the period March 1, 2018 to June 27, 2019. The Commission clearly has the power to prescribe that rate, especially in circumstances like this, where Aureon has had multiple opportunities to submit a just and reasonable rate but has failed to do so. Indeed, by failing to address the issue in its April 29 submission, Aureon has all but conceded that \$0.00164/min is a reasonable rate for that time period. In all events, the record evidence clearly establishes that Aureon's rate for this period should be no greater than \$0.00164/min.¹⁰ Indeed, a strong case can be made for an even lower rate.

[REDACTED]

Consequently, the Commission has more than a sufficient basis for prescribing a rate of \$0.00164/min for the period March 1, 2018 to June 27, 2019.

As explained below in Part II, for the period June 28, 2019 to June 30, 2020, the Commission should reject Aureon's new rate filing and direct Aureon to file the same rate

⁶ See Memorandum Opinion and Order, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, 2019 WL 1010709, ¶ 36 (Feb. 28, 2019) ("*Second Rate Order*").

⁷ *Id.* ¶ 13.

⁸ Aureon Revised Tariff Filing, WC Docket No. 18-60, Transmittal No. 40 (Apr. 29, 2019).

⁹ Petition of AT&T Services, Inc. to Reject or to Suspend and Investigate Iowa Network Services, Inc. Tariff Filing, WC Docket No. 18-60, Transmittal No. 40 (May 6, 2019) ("AT&T Pet.").

¹⁰ See Second Supplemental Declaration of Brian Pitkin (June 2, 2019), ¶¶ 3-5 ("Pitkin Second Supp. Decl."), which is attached hereto.

¹¹ See *id.* ¶¶ 6-8.

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(\$0.00164/min) it prescribes for the March 1, 2018 to June 27, 2019 period. The principal reason for the increase in Aureon's current proposed rate to \$0.00363/min. is its decision to use an updated traffic forecast, based on purported declines in the levels of CEA traffic in 2018 and the first four months of 2019. However, Aureon has made no effort to investigate, let alone demonstrate, that those declines are permanent and not the result of Aureon's unreasonable decision in February 2018 to set the rate for CEA service at a level (\$0.00576/min) that is almost four times higher than the rate (\$0.00164/min) that the evidence of record indicates was the maximum reasonable rate for Aureon's CEA service. To resolve that issue, the Commission should set Aureon's CEA rate at the \$0.00164/min level and allow parties to react. If the traffic returns to Aureon (or increases), the rate will be at its proper level or even excessive; if it does not, Aureon can then file a new tariff, using a traffic forecast that is not based on speculation. Additionally, by proceeding in this manner, as opposed to allowing Aureon's proposed rate increase to go into effect, the Commission would help limit arbitrage opportunities currently associated with Aureon's CEA service.

Alternatively, the Commission should suspend Aureon's new tariff for the full five-month period and investigate the numerous issues that exist regarding the lawfulness of Aureon's proposed rate of \$0.00363/min. *See* 47 U.S.C. § 204. In addition to the reasonableness of Aureon's new traffic forecast, a number of other issues exist with Aureon's April 29 tariff filing. These issues include: (1) Aureon's continued inability to reconcile its various circuit inventories; (2) its undocumented and unreasonable circuit forecasts; (3) its failure to allocate C&WF costs on a route or sheath mile basis, as opposed to a ring mile basis; (4) its unreasonable estimate of the fair market value of the network services leased to its Access Division; and (5) its improper inclusion in its revenue requirement of \$4.4 million in yet to be expended, undocumented switch investment.

I. THE COMMISSION SHOULD PRESCRIBE A RATE OF \$0.00164/MIN. FOR THE PERIOD MARCH 1, 2018 TO JUNE 27, 2019.

The Commission clearly has the power to prescribe a rate for the period March 1, 2018 to June 27, 2019, especially under the present circumstances where the proponent of the rate has failed to meet its burden of proof on multiple occasions and has now effectively conceded critical issues regarding computation of the rate for that period. *See* 47 U.S.C. § 204(a); *In the Matter of Beehive Tel. Co., Inc.*, 13 FCC Rcd. 12275, ¶¶ 1, 21, 25 (1998) (prescribing rates and ordering refunds with interest after carrier "failed to meet its burden of proof" during two separate rate investigations). *See also* AT&T Ex Parte, at 3 (Feb. 6, 2019).

In its Reply to AT&T's Petition, Aureon expressly states that its newly proposed rate does not apply to the period March 1, 2018 to June 27, 2019. *See* Aureon Reply at 4 ("The cost support and traffic projections filed by Aureon are for a prospective rate that will be in effect from [June 28, 2019] until July 1, 2020. That rate will not apply retroactively to cover CEA traffic from March 2018."). Further, it does not deny that it has not proposed a new rate for that period. *Id.* Instead, it takes the position that the Commission's prior rate cases relating to that

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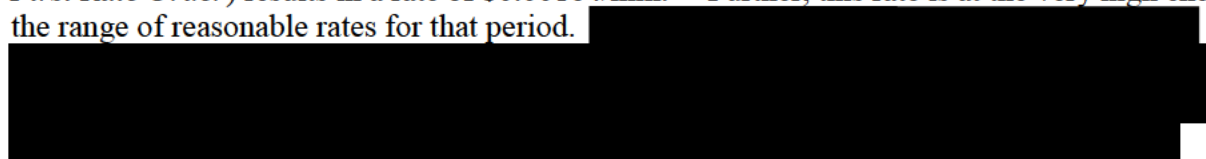
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period are now closed. *Id.* (“the FCC is not in the middle of a rate proceeding. ... the FCC’s investigation of Aureon’s March 2018 tariff rate is over.”). However, in making that argument, Aureon “ignore[s] the reality that [its prior] tariffs were suspended and *subjected to an accounting order.*” *Verizon Tel. Companies v. F.C.C.*, 453 F.3d 487, 498 (D.C. Cir. 2006) (emphasis added). By imposing that accounting order, “the Commission made clear that proceedings would continue regarding what refunds would occur, i.e., what liability petitioners would have.” *See id.* at 495. Aureon also ignores the reality that it lacks a lawful tariff rate for the period March 1, 2018 to June 27, 2019. *See First Rate Order*, ¶ 127 (“the rates under investigation in this proceeding are unlawful and subject to potential refunds for overearnings.”); *Second Rate Order*, ¶ 40 (same).¹²

The reason that Aureon has not addressed these issues is self-evident – the evidence of record establishes that Aureon’s CEA rate for that period is no greater than \$0.00164/min. In its new rate filing, Aureon uses the same 2017 financial data it used in its February 22, 2018 rate filing, and it asserts that its 2018 CEA customers will not pay for the additional switch investment included in its new tariff filing. *See Aureon Reply* at 5, 7-8. In addition, it concedes that the Ethernet rings in its network should be treated as rings in allocating COE and C&WF costs and that its C&WF costs should initially be allocated on a ring mile basis. *Id.* at 24 (“each ring, either TDM or Ethernet, essentially count as ‘1,’ and the number of miles that ring travels similarly count only as ‘1 x miles.’”). It also continues to assert that its prior circuit inventories are reliable and insists that any changes from year to year have been of minor significance. *Id.* at 26. Indeed, the principal differences between Aureon’s new rate filing and its February 22, 2018 rate filing is its use of a new traffic forecast and its inclusion of \$4.4 million in new switch investment, which Aureon now concedes will not be in service until March 2020 at the earliest. *Id.* at 10.

As Mr. Pitkin demonstrates in his Second Supplemental Declaration, calculating Aureon’s CEA rate for the period March 1, 2018 to June 27, 2019 based on its current rate methodology (but eliminating the \$4.4 million additional switch investment, and using the traffic forecast initially proposed by Aureon in February 2018 and adopted by the Commission in its *First Rate Order*) results in a rate of \$0.00164/min.¹³ Further, this rate is at the very high end of the range of reasonable rates for that period.



¹² As explained in AT&T’s Petition to Reject or Suspend, there is absolutely no merit to Aureon’s claim that the prior rate proceeding is over and that it was not under an obligation to propose a rate for the period March 1, 2018 to June 27, 2019. *See AT&T Pet.* at 8-12, 34-36.

¹³ *See Pitkin Second Supp. Decl.* ¶¶ 3-5.

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[REDACTED]

The Commission has given Aureon multiple opportunities to file a just and reasonable rate for the March 2018 to June 2019 period, and on each occasion, Aureon has failed to do so.

[REDACTED]

But, at a very minimum, the Commission should prescribe a rate of \$0.00164/min for that period. Aureon has effectively conceded that that is a reasonable rate for that period, and the Commission could bring the Commission's rate investigation for that period to a close based on those concessions.

II. FOR THE PERIOD JUNE 28, 2019 TO JUNE 30, 2020, THE COMMISSION SHOULD EITHER REJECT AUREON'S NEW TARIFF FILING, OR SUSPENDED AND INVESTIGATE IT.

For the period June 28, 2019 to June 30, 2020, the Commission should either reject Aureon's new rate filing and direct Aureon to file the same rate it prescribes for the March 1, 2018 to June 27, 2019 period, or it should suspend for the full five-month period Aureon's new tariff and investigate the numerous questions that remain unanswered regarding Aureon's rate calculation. As the record clearly establishes, the methodology that Aureon has been using since at least 2006 to calculate its rates suffers from a number of serious problems, particularly with respect to the computation of the network costs (i.e., COE and C&WF costs) allocated to Aureon's CEA service. Resolving those issues is not only of significance to Aureon's future rates but also to its past rates, which are still being litigated by AT&T, Sprint, Verizon and possibly others.¹⁵

A. The Commission Should Prescribe the Same Rate On A Going Forward Basis As It Prescribes for the Period March 1, 2018 to June 27, 2019.

Notwithstanding the Commission's clear directive in the *Second Rate Order* that Aureon file a "revised" tariff, along with "revised cost support," addressing the specific issues raised regarding the rates it had previously filed for the period March 1, 2018 to June 30, 2020,¹⁶ Aureon instead filed a new tariff for a different period (May 14, 2019 to June 30, 2020).

¹⁴ *Id.* ¶¶ 6-8.

¹⁵ In its Reply, Aureon takes issue with AT&T's claim that Aureon's new tariff filing does not comply with the Commission's rules. See Reply at 3-9. AT&T does not believe that the points raised by Aureon are valid. As AT&T pointed out, the use of 2017 financial data in a 2019 test year is a non-starter. See AT&T Pet. at 9-10. Further, the inclusion of additional switch investment that has not yet been purchased and at best will provide limited services at the very end of the test year is also not appropriate. *Id.* at 11.

¹⁶ See *Second Rate Order*, ¶ 36.


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Aureon's new rate filing addresses some of the issues identified in the *Second Rate Order*, but it does not address all of those issues.

More significantly, the rate increase that Aureon now proposes is not the result of changes made in response to the *Second Rate Order*, but rather is the result of Aureon's decision to base its new rate on a new traffic forecast for what Aureon describes as a new test year. However, neither its prior test year nor its prior traffic forecast had been identified by the Commission as requiring further adjustment. In fact, the Commission had approved in its *First Rate Order* Aureon's prior traffic forecast over AT&T's objections. *See First Rate Order*, ¶ 101.

 *See Aureon* Reply at 6. However, the issue Aureon fails to address is whether that decline was the direct result of Aureon's decision to initially set its rate for CEA service at a level (\$0.00576/min) almost four times higher than the rate (\$0.00164/min) that the evidence shows is the maximum just and reasonable rate. *See Pitkin Second Supp. Decl.* ¶¶ 3-8. Aureon also fails to address whether the 2018 decline in the level of its CEA traffic is permanent or whether any, or all, of that traffic would return to Aureon's network if Aureon's rate were set at the level it initially should have been set. Aureon clearly bears the burden of proof as to these issues – a burden it has not carried. *See Robert S. Pindyck & Daniel L. Rubinfeld, Econometric Models and Economic Forecasts*, ch. 8, p.184 (3d ed. 1991) (“A single-equation regression model” may “forecast very poorly” as a result of “a structural change occurring during the forecast period that is not explained by the model.”); *First Rate Order*, ¶ 103.

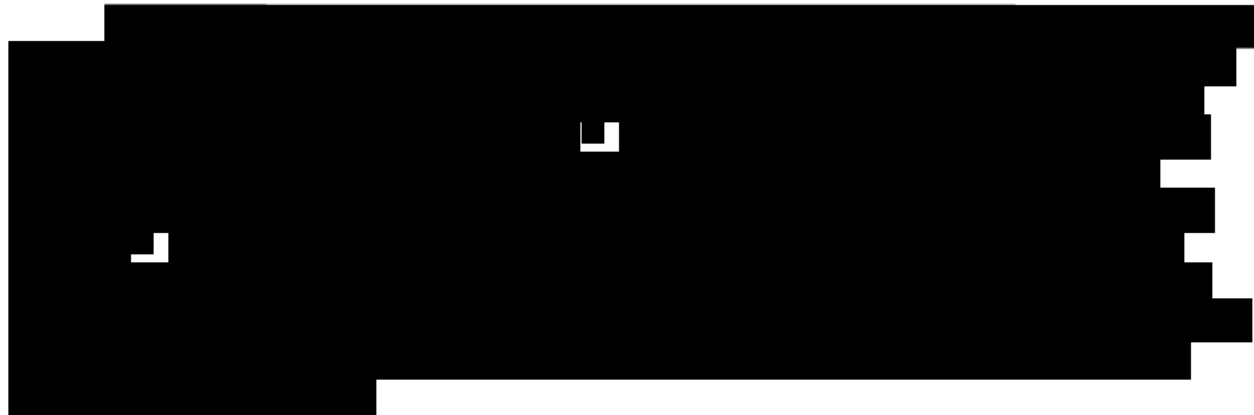
Further, the proper way to evaluate whether Aureon's excessive rates are the cause of the declining traffic on its network is to set the current rate at the level that Aureon should have originally tariffed in February 2018 (\$0.00164/min) and see what happens. If the traffic returns to Aureon's network, Aureon's customers will get the benefit of that lower rate and Aureon will not suffer any financial loss because the traffic levels for its CEA service will return to the level included in Aureon's prior forecast, and Aureon will recover its costs.¹⁷ If, on the other hand, the traffic does not return (or only a portion of the traffic returns), Aureon can then file a new tariff based on a new traffic forecast that is not based on speculation. Further, there are additional benefits to proceeding in this manner. If Aureon is permitted to raise its current rate to \$0.00363/min (even on an interim basis), that rate increase could result in further traffic being diverted from Aureon's network, which would only further exacerbate Aureon's current rate problem.

¹⁷ Indeed, there is a possibility that additional traffic could be added to the network. For example, Inteliquent projected that a significant level of demand could be delivered to Aureon's network. *See First Rate Order*, ¶ 16. And other carriers who have bypassed traffic over the years might also return their traffic to Aureon's network.

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To avoid the potential for these impacts, the Commission should reject Aureon's new rate filing and direct Aureon to file the same rate the Commission prescribes for the March 1, 2018 to June 27, 2019 period. In this manner, the price for transport will be driven closer to its economically efficient level. In no event should Aureon be rewarded with a rate increase that is a direct result of its own, prolonged failure to comply with the Commission's rules.

B. Alternatively, the Commission Should Suspend and Investigate Aureon's New Rate.

If the Commission decides not to reject Aureon's rate and prescribe a rate of \$0.00164/min for future periods, it should, at a minimum, suspend Aureon's rate and set for investigation the many serious issues relating to the lawfulness of Aureon's rates that continue to exist. In addition, to avoid the potential for a further decline in the levels of Aureon's CEA traffic, the Commission should seriously consider suspending Aureon's rate for the full five-month period of its investigation. The Commission clearly has the power to do so, and given Aureon's failure to file a rate that complies with the Commission's directive in the *Second Rate Order*, Aureon's CEA customers should not be subject to a rate increase until Aureon carries its burden of demonstrating the reasonableness of its proposed rate increase.

The principal issues that require further investigation are discussed below.

1. The Accuracy of Aureon's Circuit Inventories.

As AT&T documented in its Petition to Reject or Suspend, Aureon has not provided adequate responses to the specific issues identified by the Commission in its *Second Rate Order*

¹⁸ AT&T Ex Parte Submission, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07- 135; *Connect America Fund*, WC Docket No. 10-90; *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, at 30, 34 (Apr. 9, 2019).

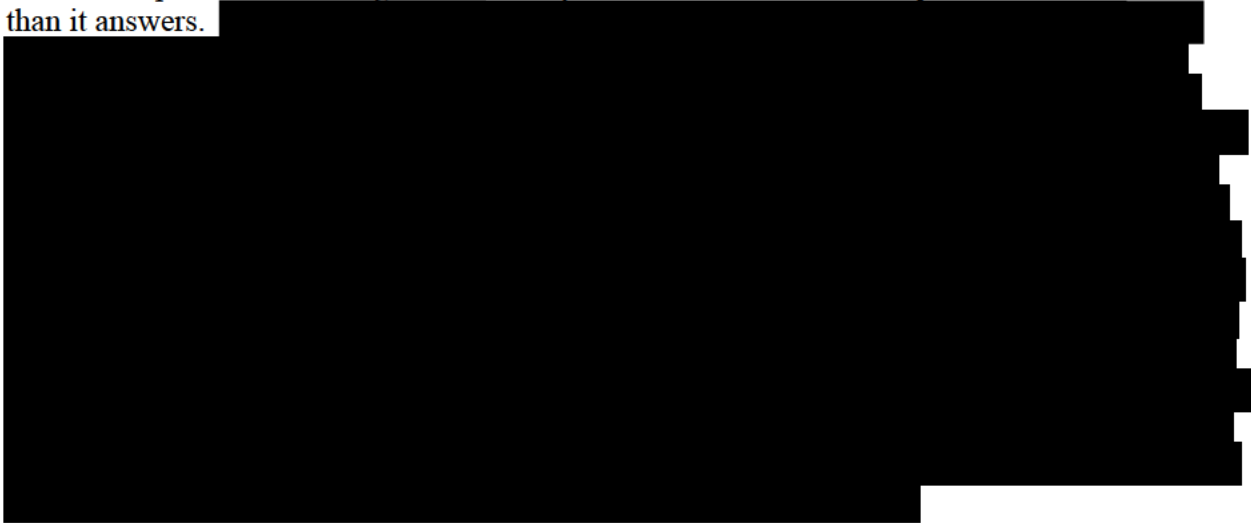
¹⁹ Declaration of John W. Habiak, *In the Matter of AT&T Corp. v. Iowa Network Services d/b/a Aureon Network Services*, Proceeding No. 17-56 (June 4, 2017).

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regarding the reliability of Aureon's circuit inventories. *See* AT&T Pet. at 24-28. In fact, Aureon's April 29 tariff filing raises more questions about the reliability of its circuit inventories than it answers.



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- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
- I [REDACTED]

2. The Reliability of Aureon's Circuit Forecasts.

In its Petition to Reject or Suspend, [REDACTED]

[REDACTED]

[REDACTED]

- I [REDACTED]

²⁰ Iowa Network Services, Inc. d/b/a Aureon Network Services, Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 40, Description and Justification, at 13 (Apr. 29, 2019) ("Aureon D&J").

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[REDACTED]

[REDACTED]

3. The Reasonableness of Aureon's Cost of Service and Fully Distributed Cost Calculations.

[REDACTED]

In its Reply, Aureon wholly ignores the issues relating to the allocation of its COE costs and continues to dodge the issues relating to the derivation of its Filed Lease Expense. *See* Reply at 24-25. As for whether its C&WF costs should be allocated on a route or sheath mile basis, Aureon does not take issue with Mr. Pitkin's testimony that route and/or sheath miles are the key drivers of C&WF costs. It instead argues that it does not possess the information needed to allocate C&WF costs on a sheath mile basis and says nothing about route miles. *See* Aureon Reply at 25. Aureon's claims in this regard are simply not credible. At a minimum, Aureon must know what rings share the same routes. It is also difficult to understand how Aureon can assign specific circuits to rings without knowing which rings share the same routes and—with respect to a specific route—how many separate sheaths exist on that route. This is basic circuit engineering information and as thus should be accessible.²³

²¹ *See* Declaration of Brian F. Pitkin in Support of AT&T Services, Inc.'s Opposition to Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, ¶ 31 (Dec. 6, 2018); *see also* Pitkin Second Supp. Decl. ¶¶ 8, 10.

²² *Id.* ¶ 32.

²³ *See* Pitkin Second Supp. Decl. ¶ 8, 10.

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The Commission should therefore designate the following issues for investigation and direct Aureon to provide the following information or explain why that information cannot be provided: [REDACTED]

- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
- I [REDACTED]

4. The Reasonableness of Aureon's Calculation of the Fair Market Value.

As explained in AT&T's Petition to Reject or Suspend, Aureon's estimate of the fair market value of DS-3 transport service still suffers from multiple deficiencies. *See* AT&T Pet. at 13-22. [REDACTED]

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[REDACTED]

And, Aureon still has not adequately addressed AT&T's criticisms of Aureon's continued reliance on the rates of regulated services offered by other CEA providers, Qwest and NECA, nor has it responded to the problems AT&T identified in Aureon's replacement cost analysis. *Id.* at 18-19.

In its Reply, Aureon provides some additional data regarding the information set forth in the spreadsheet identifying its DS-3 third-party transport services but it still does not provide any information supporting its claim that its "CEA Transport Service" is more robust than its third-party DS-3 transport services. *See Reply* at 14-18.

[REDACTED]

Finally, Aureon does not respond to the many points AT&T has raised criticizing Aureon's continued reliance on the regulated services of other providers, nor has it addressed the problems with Aureon's replacement cost analysis.

The Commission should therefore designate these issues for investigation and direct Aureon to provide the following information or explain why that information cannot be provided: [REDACTED]

- I [REDACTED]
- I [REDACTED]
- I [REDACTED]

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• [REDACTED]

[REDACTED]

[REDACTED]

- Address each of the deficiencies in Aureon’s replacement cost analysis previously identified by AT&T. See AT&T Opp. at 41-43; AT&T Ex Parte, Ex. 49 (Feb. 6, 2019).

5. The Reasonableness of Aureon’s Inclusion of \$4.4 million in Additional Switch Investment.

As AT&T pointed out in its Petition to Reject or Suspend, Aureon did not present any new data supporting the inclusion of an additional \$4.4 million in central office switching investment, nor did it explain the specific basis for its \$4.4 million estimate. See AT&T Pet. at 33-34. Instead, it largely repeated the same arguments it presented in its prior rate case and provided slightly more information regarding the switch project’s schedule, asserting without providing any documentation that the new switching equipment should be available to provide service to some customers in March 2020. Aureon Reply at 9-10. This schedule is directly at odds with the schedule that Aureon previously assured the Commission was accurate. See Supp. Decl. of Pat Vaughan, ¶ 12 (Dec. 12, 2018) (the “entire switch replacement project is expected to take approximately three years to complete” but that “timeframe is necessarily dependent on the amount of revenues that Aureon receives to expedite implementation.”). Moreover, Aureon did not provide any further data or information regarding its switch project in its Reply (see Aureon Reply at 9-10), and as a consequence has still not provided the “complete cost support and explanatory material” required by the *Second Rate Order*. See *Second Rate Order*, ¶ 6; see also Pitkin Second Supp. Decl. ¶ 10.

The Commission should therefore designate these issues for further investigation and direct Aureon to provide the following information or explain why this information cannot be provided: [REDACTED]

[REDACTED]

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Fully justify Aureon's inclusion of the \$4.4 million in anticipated switch investment under the Commission's accounting rules, as well as the Commission's "used and useful" standard. *See* Pitkin Supp. Decl. ¶¶ 30-32; AT&T Ex Parte, Ex. 50 (Feb. 6, 2019).

6. The Reasonableness of Aureon's New Traffic Forecast.

As previously noted, Aureon has not shown that the decline in its CEA traffic in 2018 was permanent and not the result of its decision to initially set the rate for its CEA service at a level (\$.00576/min) that is almost four times higher than the rate (\$.00164/min) that should have been set. AT&T also identified in its Petition to Reject or Suspend a number of other issues regarding Aureon's new traffic forecast. *See* AT&T Pet. at 34-36. In addition, as explained by Mr. Pitkin in his second supplemental declaration, the 2018-19 traffic data on which Aureon

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relied in developing its forecast does not support the use of a linear regression. *See* Pitkin Supp. Decl. ¶ 11. None of these issues is addressed adequately in Aureon's Reply. *See* Aureon Reply at 12-14.

Given the significance of these issues to the level of Aureon's proposed rate, the Commission should designate these issues for investigation and direct Aureon to provide the following information or explain why this information cannot be provided:

- Explain what steps, if any Aureon has taken to determine whether the decline in its 2018 traffic volumes is permanent or was the result of Aureon's unlawfully excessive rates.
- Provide all work papers supporting Aureon's new traffic forecast, including any alternative forecasts that may have been generated.
- Explain why Aureon did not use traffic data from 2016 and 2017 in generating its new traffic forecast.
- Provide, on carrier by carrier basis, the traffic volumes set forth in Aureon's new tariff filing. *See* Aureon D&J at 8-9.
- Identify the specific LECs for which there were significant monthly differences in the levels of CEA traffic in the period January 1, 2018 to April 30, 2019, focusing particularly on the traffic routed to CLECs believed to be engaged in access stimulation activities.

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

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III. CONCLUSION

For the reasons set forth above, the Commission should reject Aureon's new tariff filing and prescribe a rate of \$0.00164/min for the period March 1, 2018 to June 27, 2019 and on a going forward basis. Alternatively, the Commission should suspend Aureon's tariff for the full five-month period (thereby leaving the current rate of \$0.00296/min. in place) and set for investigation the issues identified above regarding Aureon's most recent tariff filing.

Sincerely,

/s/ James F. Bendernagel, Jr. _____

James F. Bendernagel, Jr.
Partner

Enclosures

Cc: James L. Troup, Counsel for Aureon
Tony Lee, Counsel for Aureon
Gil Strobel, FCC
Victoria Goldberg, FCC
Edward Krachmer, FCC
Christopher Koves, FCC
Richard Kwiatkowski, FCC
Joseph Price, FCC
Steven A. Fredley, Counsel for Sprint
Amy E. Richardson, Counsel for Sprint
Keith C. Buell, Counsel for Sprint
Curtis L. Groves, Counsel for Verizon

AT&T Exhibit 54

Ring Miles (2006-2019)

CONFIDENTIAL MATERIALS OMITTED

**Brian F. Pitkin
Second
Supplemental
Declaration**

**CONFIDENTIAL
MATERIALS OMITTED**